No. 06-768

IN THE

Supreme Court of the United States

TOWN OF MOUNT PLEASANT,

Petitioner,

v.

LEGION OF CHRIST, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent Legion of Christ, Inc. is a not-for-profit organization that is not publicly traded. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

In this declaratory judgment action, the New York State Court of Appeals, the State's highest court, unanimously made extensive findings of fact and held solely, as a matter of State law, that the use of a parcel of real property by its owner Respondent Legion of Christ, Inc., a recognized order of the Roman Catholic Church, complies with the applicable provisions of Petitioner's municipal zoning regulations.

Specifically, the Court stated in its June 6, 2006 Opinion that is the subject of the Petition,

> We hold that ... the property is still being used for conference and training purposes within the meaning of the Town Code, and the Legion's use is therefore permitted as of right. (Pet. App. at 2a)
>
> ...
>
> The provision of state law on which this case turns is ... a local zoning code. (Pet. App. at 7a)

Since the Court decided this matter on an adequate, independent ground of State law, this Court is without jurisdiction to hear this matter and should deny the Petition on this ground alone, as discussed below at Point 1.

This Court should also deny the Petition because Petitioner failed to present properly to the State courts, and the Court of Appeals did not address, any Constitutional claim or the federal question Petitioner now seeks to raise, as discussed below at Point 2.

Petitioner, a municipal corporation, seeks protection under the Fourteenth Amendment of the United States Constitution, protection to which it is not entitled.

Alternatively, Petitioner seeks an advisory opinion from this Court. This Court should deny the Petition on either ground, as discussed below at Point 3.

Petitioner also seeks to invoke this Court's jurisdiction by asserting that the Court of Appeals's Opinion conflicts on a substantial question of federal law with the decision of another state's court of last resort. For the reasons discussed below at Point 4, Petitioner has failed to raise any such conflict so as to warrant review by this Court.

Furthermore, Petitioner now seeks to transform one sentence of dictum in the Court of Appeals's Opinion into a question of federal or Constitutional law for review by this Court, a request this Court should also reject for this reason alone, as discussed below at Point 5.

Thus, Respondent respectfully submits that this is a case over which this Court lacks jurisdiction, as the New York Court of Appeals ruled on an adequate and independent ground of State law. It presents no issue of national jurisprudential significance, does not properly present any issue of federal or Constitutional law or any issue representing a conflict between the subject Opinion and a decision by the highest court of any other state or a United States Court of Appeals. It is solely a ruling by New York State's highest court in which that Court interprets and applies a local municipal zoning regulation on State law grounds. This case does not satisfy any of the requirements to merit review by this Honorable Court.

COUNTER-STATEMENT OF FACTS

One need to look no further for the correct factual statement of this case than the following portions of the Court of Appeals's Opinion itself (Pet. App. 1a - 8a):

The Town of Mount Pleasant Code allows the use of a parcel of land for "[c]onference and training facilities." When this zoning was adopted the property was owned by International Business Machines Corporation (IBM), which used it to train its own employees, and rented it to others who made similar use of it. IBM sold the property to defendant, Legion of Christ, Inc. (the Legion), an order of the Roman Catholic Church, which uses the property for the training of future priests and for other religious education. Apart from the subject matter taught, the chief difference between IBM's use and the Legion's is that many of the people now being taught are in long-term programs and thus live on the property for a year or two.

. . .

IBM acquired the 97-acre property sometime before 1983, when the Town created a new "Office Corporate Education" or "OB-CE" zoning district, coextensive with the property. A provision of the Town Code enacted in that year said that one of the purposes of the new district was to provide an "opportunity for private enterprise" to educate "the employees of major corporations" (citation omitted). IBM built a conference center on the property, which it used to train its employees.

IBM decided in the early 1990s that it wanted to rent out its conference center from time to time, and it asked for and was granted a change in the Town Code's description of the OB-CE district. A 1993 amendment eliminated the Code's reference to "private enterprise" and changed its language to refer to "the employees of major corporations and others" (*see* Town of Mount Pleasant Code § 218-74, as amended Feb. 9, 1993). After this zoning change,

IBM rented the property to profit-making and nonprofit enterprises, including a university, a college and a church. These lessees used IBM's facility for conference and training purposes without objection from the Town.

The Town did object, however, when IBM sold the property to a tax exempt entity, the Legion, in 1996. . . . Apart from converting two rooms into chapels, the Legion has made few physical changes in the building: it uses the same bedrooms, the same rooms for preparing and serving food, the same classrooms, even the same weight room.

. . .

The Town Code defines the "Permitted Principal Uses" of property in the OB-CE district as follows:

1. Conference and training facilities to include but not be limited to:

    a. Continuing education activities and facilities.

    b. Classroom space and teaching equipment.

    c. Offices for staff.

2. Indoor and outdoor physical recreational facilities.

3. Housing and dining facilities provided that such facilities are not operated as a public hotel or public restaurant as defined in § 218-74F.

(Town of Mount Pleasant Code, ch 218, Schedule of Regulations, Residence Districts IIIA.)

The Legion uses the property as the Town Code specifies. It conducts brief programs that could be labeled "[c]onference[s]" and it provides "training" to its brothers in formation and others. Substantially

> all of its activities consist of "[c]ontinuing education," and to that end it uses "[c]lassroom space," "teaching equipment" and "[o]ffices for staff." It also uses "[i]ndoor and outdoor physical recreational facilities," and "[h]ousing and dining facilities." In short, the Town Code definition might almost have been written to describe what the Legion does on the property-and this is unsurprising, for it was written to describe what IBM did there, and the Legion does much the same thing.
>
> The Legion provides religious training and education, while the activities of IBM and its tenants were largely secular . . .

MISSTATEMENTS OF FACT AND/OR LAW AND MATERIAL OMISSIONS IN THE PETITION

Pursuant to Rule 15 of the Rules of the Supreme Court, Respondent sets forth below perceived misstatements of fact and/or law in the Petition that bear on the issues that properly would be before the Court if *certiorari* were granted. (Citations to the Record below have been omitted).

First, Petitioner asserts that it created the subject OB-CE zoning district for business use with the intention of preserving and stabilizing the tax base. However, this statement is contradicted by Section 4.11 of Petitioner's Final Environmental Impact Statement ("FEIS") adopted at the time it created the OB-CE zoning district at the request of IBM Corporation. After discussing the potential real property tax revenue that would be generated by the IBM facility, the Town noted that, ". . . the amount of taxes payable may be affected by the availability of real estate tax abatements or exemptions." Thus, Petitioner's repeated assertion that its intention in creating the OB-CE zoning district was to limit users to taxpaying entities is a clear misstatement of material fact.

Second, Petitioner asserts that it created the OB-CE zoning district "... specifically for a business-only commercial/industrial 'corporate training center' setting to ensure that the property in that zone would remain taxable, unless a tax-exempt applicant applied for a special permit." This, too, is a clear misstatement of material fact.

Petitioner's own Verified Complaint that commenced this proceeding contradicts this assertion: Petitioner stated that "religious uses of the property are not permitted in the 'OB-CE' zoning district, either as a permitted principal use or as a special permitted use."

Thus, Petitioner asserted in 1997 that "religious uses" of the Property were not permitted at all, and in 2006 that such uses were permitted by special permit, notwithstanding that (a) there is no such special permit use in the Town's own Zoning Code, (b) the Zoning Code prohibits any use not specifically permitted by its terms, and (c) the Code contains no definition of the term "religious use."

In addition, any attempt to permit the use of the Property by a commercial, tax-paying owner while attempting to prohibit the identical use of the Property by a religious, tax-exempt owner would violate the basic principle of New York State jurisprudence that zoning regulations can regulate land uses but not land users.

Furthermore, Petitioner's assertions that its intention in creating the OB-CE zoning district was for business use only and to preserve and stabilize the tax base, is entirely contradicted by its assertion that a tax-exempt entity such as Respondent could obtain a special permit and thus qualify as a permitted use under zoning, an assertion which is clearly inconsistent with Petitioner's earlier contentions and contrary to Petitioner's Zoning Code.

Third, Petitioner omits any discussion of the key 1993 amendment to the OB-CE zoning provisions, which established the zoning provisions that were in effect in 1996 when Respondent purchased the property and remain in effect today. This is a misleading material omission.

The 1993 amendment was precipitated by a letter from IBM's chief real estate counsel Alan R. Wolfert dated June 1, 1992 to the Town in which Mr. Wolfert stated that attendance at IBM's programs had been significantly reduced, that IBM anticipated having a decreased need for such facilities, and that it "would like to promote greater utilization of the facility 'to adequately advance, support, serve and benefit' not only the 'technical and physical education of the employees of major corporations'" — which had been the use- controlling language in effect at the time -- "but that 'of others' as well."

In granting IBM's request to broaden the universe of potential users and uses of the facility, Petitioner amended the Code language to eliminate the limitation of uses to "private corporate," and the "opportunity for private enterprise" and "technical and physical education" when describing the purposes of the OB-CE zoning district.

The Town expanded the universe of permitted users of the facility to include "employees of major corporations *and others.*" (Emphasis added). Certainly, Respondent is one of the "others." The Court of Appeals found in this regard in its Opinion:

> IBM acquired the 97-acre property sometime before 1983, when the Town created a new "Office Corporate Education" or "OB-CE" zoning district, coextensive with the property. A provision of the Town Code enacted in that year said that one of

> the purposes of the new district was to provide an "opportunity for private enterprise" to educate "the employees of major corporations" (Town of Mount Pleasant, Addendum to Zoning Book, June 28, 1983). IBM built a conference center on the property, which it used to train its employees.
>
> IBM decided in the early 1990s that it wanted to rent out its conference center from time to time, and it asked for and was granted a change in the Town Code's description of the OB-CE district. A 1993 amendment eliminated the Code's reference to "private enterprise" and changed its language to refer to "the employees of major corporations and others" (*see* Town of Mount Pleasant Code § 218-74, as amended Feb. 9, 1993). After this zoning change, IBM rented the property to profit-making and nonprofit enterprises, including a university, a college and a church. These lessees used IBM's facility for conference and training purposes without objection from the Town.

(Pet. App. at 2a).

Fourth, Petitioner characterizes the Trial Court's findings that the Respondent's use of the Property was lawful because it was not being used as a seminary or private college. However, this misstates the Trial Court's finding. The Trial Court found that Respondent's use of the Property "complies in all respects with the OB-CE Zoning Regulations" and that its use was "identical in all material respects to IBM's use of the Property . . ." — a conclusion virtually identical to the unanimous factual determination of the Court of Appeals.

The Court of Appeals's holding is based solely upon its extensive factual findings and upon State law grounds. It presents no issue of law for review by this Court.

REASONS FOR DENYING THE PETITION

Respondent respectfully submits that the Court should deny the Petition for the following reasons:

1. This Court Does Not Have Jurisdiction to Hear this Appeal Because the Holding of the New York State Court of Appeals Is Based Exclusively upon an Adequate, Independent Ground of New York State Law.

The Court of Appeals based its Opinion upon its extensive findings of fact with respect to Respondent's actual use of the Property. Based upon those factual findings and principles of New York State law, the Court held that Respondent's use complied with the municipal zoning regulations applicable to the Property, stating, "When this action was brought ... the Legion then had available to it the state-law defense that we have found dispositive. The provision of state law on which this case turns is ... a local zoning code." (Pet. App. at 7a).

This holding is uniquely singular and local in its determination i.e., does one property owner's use of its property comply with applicable zoning? Thus, the case presents no issue over which this Court has jurisdiction.

Petitioner nevertheless asserts that one sentence of dictum warrants this Court's review, a sentence in which the Court of Appeals stated one of the reasons why it rejected Petitioner's contentions below; that is, that "keeping property in tax paying hands is not a legitimate purpose of zoning."

This Court stated in *Black v. Cutter Laboratories*, 351 U.S. 292 (1956) that it "reviews judgments, not statements in opinions." The Court went on to say,

> . . . it is our duty to look beyond the broad sweep of the language and determine for ourselves precisely the ground on which the judgment rests. This means no more than that we should not pass on federal questions discussed in the opinion where it appears that the judgment rests on adequate state grounds.

Id. at 298 (citations omitted).

The *Cutter Laboratories* Court dismissed petitioner's writ because the appealed-from decision of the Supreme Court of California involved "only California's construction of a local contract under local law, and therefore no substantial federal question is presented," *Id.* at 299. The Court also stated that, ". . . even if the State Court's opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question," *Id.* at 299.

The Court reaffirmed this principle in *Coleman v. Thompson*, 501 U.S. 722, 729 (1991), stating,

> This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment. . . . In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.

(Citations omitted).

In the instant proceeding, the New York Court of Appeals stated that its holding was based upon state law grounds: ". . . the Legion . . . had available to it the state-law defense that we have found dispositive . . . The provision of state law on which this case turns is . . . a local zoning code . . ." For this reason alone, this Court should dismiss the Petition.

2. This Court Should Not Review a Question of Constitutional Law or a Federal Question That Petitioner Failed to Present Properly to the State Courts and Which the Court of Appeals Did Not Address.

This Court should decline review of the Fourteenth Amendment claim raised by Petitioner since Petitioner failed to raise that Constitutional issue in the state courts. This Court should also decline review of the federal question which Petitioner now seeks to raise, for the first time, in Section B of its 'Reasons For Granting the Petition.'

It is an established rule, with very rare exceptions, that this Court will not review a federal claim unless it has been "addressed by, or properly presented to, the state court that rendered the decision" on review. *Adams v. Robertson*, 520 U.S. 83 (1997) (dismissing the writ of certiorari as to constitutional issue as improvidently granted); *See also Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988) (declining to address constitutional issue). The policies behind this rule "are first, comity to the States, and second, a constellation of practical considerations, chief among which is our own need for a properly developed record on appeal." *Bankers Life*, 486 U.S. at 79; *See also Adams*, 520 U.S. at 90-91.

In *Adams*, petitioners sought a writ of certiorari to review the Alabama Supreme Court opinion which affirmed the lower court "addressing only state-law issues." This Court

had granted certiorari on the issue of whether the Due Process Clause of the Fourteenth Amendment had been violated. However, the Court then dismissed the writ as improvidently granted, noting that in almost all instances, it "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Id.* at 86.

The *Adams* Court pointed out that "the Alabama Supreme Court did not expressly address the question on which we granted certiorari" and petitioners had not "met their burden of showing that the issue was properly presented to that court." The Court explained that, "[w]hen the highest state court is silent on a federal question before us, we assume that issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption, by demonstrating that the state court had 'a fair opportunity to address the federal question that is sought to be presented here.'" Id. at 86-87. (Citations omitted). This is a burden Petitioner has utterly failed to meet in the instant case.

The *Adams* Court stated the jurisprudential basis for this requirement:

> . . . 'it would be unseemly in our dual system of government' to disturb the finality of state judgments on a federal ground that the state court did not have occasion to consider. Thus, the rule affords state courts 'an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes' that could obviate any challenges to state action in federal court.

Id. at 90. (Citations and internal quotation marks omitted).

The *Adams* Court also noted that this Court will generally refuse "to consider issues raised clearly for the first time in a petition for rehearing when the state court is silent on the question." *Id.* at 89, footnote 3. Here, Petitioner did not address or properly present the issue of tax base or fiscal zoning. Petitioner raised this issue for the first time in its motion for reargument to the New York Court of Appeals, which denied the motion without opinion. Consequently, since Petitioner failed to present this issue properly to the State courts and the New York Court of Appeals did not address the issue, this Court should deny review.

In *Bankers Life*, and *Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988) this Court declined to address the issue of whether the Eighth Amendment's Excessive Fines Clause serves to limit punitive damages in state civil cases because the issue was not raised in the state courts below. The *Bankers Life* Court explained that review of a Constitutional claim not raised in the state court below "would short circuit a number of less intrusive, and possibly more appropriate, resolutions" such as state legislation, decisions of the state courts on state constitutional or "other adequate and independent nonfederal ground[s]," or allowing the state Supreme Court "its opportunity to decide the question of federal law in the first instance," thus giving this court the "benefit of well-developed record and a reasoned opinion on the merits." *Id.* at 79-80.

Similarly, in this case, the New York courts should have been given the opportunity to decide any federal or Constitutional issue and the New York State Legislature have been given a chance to amend its tax exemption or zoning enabling laws to reflect any change in the State's policy on the issue raised by Petitioner. This Court should therefore decline to review this alleged federal question, which Petitioner raised for the first time in its unsuccessful motion for reargument to the Court of Appeals and in this Petition for Writ of Certiorari.

3. Petitioner, a Municipal Corporation, Cannot Seek Protection under the Fourteenth Amendment to the United States Constitution.

Petitioner's argument with respect to the Fourteenth Amendment is, at best, unclear. Petitioner apparently attempts to assert rights under the Fourteenth Amendment, and its attempt is utterly without basis. This Constitutional provision was enacted to protect individuals from governmental misconduct and over-reaching. Quite simply, the Fourteenth Amendment does not "protect" the government from itself.

Section 1 of that Amendment states, in pertinent part:

> All *persons* born or naturalized in the United States . . . are *citizens* of the United States . . . No state shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States; nor shall any State deprive any *person* of life, liberty, or property, without due process of law . . .

(Emphasis added.)

The Fourteenth Amendment protects "persons" who are "citizens" against the actions of a "State." Petitioner, as an arm of the State, does not qualify for protections under the Fourteenth Amendment.

This Court has held that a political subdivision of the state has no rights under the United States Constitution which it may invoke in opposition to its creator, the state. *See City of Newark v. State of New Jersey*, 262 U.S. 192 (1923) (the regulation of municipalities is within the domain of the state so that city could not invoke the protection of the 14th Amendment against the state); *City of Trenton v. State of*

New Jersey, 262 U.S. 182 (1923) (municipal corporation is merely a department of the state which may withhold, grant or withdraw powers and privileges as it sees fit so that city could not attack state act as violative of due process and Fifth Amendment).

If, however, Petitioner seeks to utilize the Court of Appeals's Opinion as a springboard for an opinion on an issue of "tax based" or "fiscal zoning," any such attempt would be improper as it would seek an advisory opinion from the Court on a "statement" of dictum in the Opinion, rather than upon the judgment itself, *see Black v. Cutter Laboratories*, 351 U.S. at 297-298.

Thus, this case does not present *any* question of Constitutional law and the Court should deny the Petition.

4. The Court of Appeals's Opinion Does Not Conflict with the Holdings of Other States' Courts of Last Resort.

Petitioner asserts that the Court of Appeals Opinion has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

However, for the reasons discussed above, no federal question is properly before this Court. The instant case, and the cases Petitioner cites in support of its contention, involve matters of zoning law which are uniquely state and local in nature, as zoning ordinances are creatures of state law as an exercise of the states' police power, and principles of state law evolve through state statutes, regulations, and decisional law; this is the very essence of federalism. Each state is free, within very broad constitutional parameters such as the limitations imposed on regulatory "takings" jurisprudence, to adopt and enforce its own land use statutes and regulations.

See e.g. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Local municipalities, in turn, can exercise that police power which has been delegated to them by the state. EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING § 1:8 (4th ed. 2005)

The cases Petitioner cites reflect only the different states' views on proper purposes of zoning, views that the courts have expressed in the context of highly differing fact patterns and on questions of state law. None of the cases Petitioner cites deals with the issues of land-use regulations and an owner's entitlement to real property tax exemption, and thus are inapposite. Also, Petitioner fails to cite any disagreements among decisions of the federal Courts of Appeals: these are matters for determination by the state courts, under state law and principles of the state constitutions — and not federal law.

Initially, Petitioner contends that a conflict exists by referring to state court cases that state that property values may be considered in zoning decisions. While this contention may or may not be true in different states, it is very different from municipal action that seeks forcibly to keep a parcel of real property on the tax rolls, despite compliance by the owner with applicable zoning, due solely to the owner's tax exempt status.

Therefore, those decisions Petitioner cites in which other states' courts hold that preservation of property values or increasing municipal tax bases are valid purposes of zoning, are irrelevant and do not establish a conflict with the Court of Appeals's Opinion. *See, e.g., Mississippi Manufactured Housing Ass'n v. Board of Supervisors of Tate County*, 878 So.2d 180 (Miss. Ct. App. 2004), cert denied, 878 So.2d 67 (Miss. 2004); *MDJ Properties, Inc. v. Union Twp. Bd. of Trustees*, 2000 WL 313502 (Ohio Ct. App. 2000) dismissed, appeal not allowed,

89 Ohio St.3d 1465, 732 N.E.2d 998 (2000) (an unreported decision by the state's intermediate appellate court); *Beck v. City of St. Paul*, 304 Minn. 438, 231 N.W.2d 919 (Minn. 1975); *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (3d Cir. 2003) (in a case challenging the restriction of mobile homes to one zoning district, the court held that "localities may legitimately regulate land use to advance a myriad of different interests, including property values, aesthetics, health, and the general welfare . . ."); *Harvey v. Town of Marion*, 756 So.2d 835 (Miss. Ct. App. 2000) (a decision by the state's intermediate appellate court); *Warren v. Municipal Officers of Town of Gorham*, 431 A.2d 624 (Me. 1981).

Second, statements made in those decisions Petitioner cites with respect to preservation of a municipal tax base and/or fiscal motives underlying zoning decisions are simply dictum, and are not germane to the actual holdings in those cases. These cases certainly do not conflict with the holding in the instant case, i.e., that Respondent's use of its property complies with the local zoning provisions. *See, e.g., Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36 (D.C. 1979); *Woods v. Kittitas County*, 130 Wash.App. 573, 123 P.3d 883 (Wash. Ct. App. 2005) (a decision by the state's intermediate appellate court).

5. The Court of Appeals's Opinion Does Not Involve a Question of Federal Law.

Petitioner cites various decisions to support its argument that this Court should review a question of federal law supposedly raised by the Court of Appeals. Petitioner asserts that there are differing views among some states' courts as to whether preserving a municipal tax base is a valid consideration in land use decisions and that this Court should provide guidance on this subject.

However, Petitioner ignores the fact that the Court of Appeals held only that Respondent's use of its property complies with the local zoning code, a question exclusively and explicitly one of New York State law, not federal law. The Court of Appeals stated that Respondent's state law defense was dispositive, making any possible question of federal law dictum. The Court of Appeals's Opinion did not mention either the federal question now raised by Petitioner, or the Fourteenth Amendment.

Thus, the cases Petitioner cites in its attempt to create a conflict on a question of federal law among state courts of last resort fail to support Petitioner's contention; the cases are fact-specific holdings containing various statements of dictum regarding the validity of specific sections of local municipalities' zoning ordinances under the laws of the respective states. They present no federal question and no conflict among the state courts of last resort.

For example, Petitioner cites *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996), in which the court upheld a zoning amendment, rejecting petitioner's claim that the amendment was arbitrary and capricious and constituted "spot zoning." Clearly, the court's holding is a decision under state law that does conflict with the holding in the instant case.

Petitioner also cites *Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 336 A.2d 713 (N.J. 1975), in which the court concluded on state law grounds that the township could not exclude certain categories of people by making it physically and economically impossible to provide low and moderate income housing in the municipality, an entirely different issue than is present in the instant case, i.e., the compliance of a single user with the provisions of local zoning.

Petitioner also cites other state courts' decisions that observe that increasing the tax base or "fiscal zoning" are not legitimate objectives of zoning, as Petitioner attempts to divine differing dicta statements in those decisions. However, any such differences are matters of state, not federal, law, and are unrelated to the holding in the instant case. *See Bossman v. Village of Riverton*, 291 Ill. App. 3d 769, 684 N.E.2d 427 (Ill. App. Ct. 4th Dist. 1997) appeal denied, 175 Ill. 2d 523, 689 N.E.2d 1137 (1997); *Zuckerman v. Town of Hadley*, 442 Mass. 511, 813 N.E.2d 843 (Mass. 2004); *Kirby v. Township Committee of Bedminster*, 341 N.J.Super. 276, 775 A.2d 209 (N.J. Super. Ct. App. Div. 2000) (a decision by the state's intermediate appellate court); *Sod Farm Assocs. v. Springfield Twp. Planning Bd.*, 298 N.J.Super. 84, 688 A.2d 1125 (N.J. Super. Ct. Law Div. 1995), aff'd, 297 N.J. Super. 584, 688 A.2d 1058 (N.J. Super. Ct. App. Div. 1996).

Thus, Petitioner has merely cited a handful of state court decisions that address matters of local and state law. None raises a conflict among the state courts of last resort on a question of federal law.

CONCLUSION

For the reasons set forth above, Respondent submits that Petitioner has failed to satisfy any of the requirements for this Court to grant its Petition, and Respondent respectfully requests that this Court deny in all respects the Petition for a Writ of Certiorari.

Respectfully submitted,

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